

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-57947-2023

Date of Decision: 22.11.2023

Kabal Singh alias Kabi

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present third petition filed under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.125 dated 12.10.2018, registered under Section 22 of NDPS Act, 1985 (hereinafter referred to as "the Act") at Police Station Jhabhal, District Tarn Taran.

2. The factual matrix of the case as per the present FIR is that on 12.10.2018, when in connection with patrolling duty the investigating officer along-with other officials were present near Police Station, Jhabal and they saw a person coming on foot on the right side of the road carrying a polythene bag, who got perplexed on seeing them and threw the said packet in the bushes. On being apprehended, he disclosed his name as Kabal Singh alias Kabi and upon a search having been conducted as per provisions of the Act, 730 intoxicant pills were recovered.

3. Learned counsel would contend that the petitioner is in custody for about a year. He alleges false implication in the case. The recovery effected from him is planted as it was not from his conscious possession. No

independent witness has been joined at the time of alleged recovery. Thus, he prays for grant of bail.

4. Learned State counsel on the basis of the custody certificate filed states that the petitioner has been behind bars only for 11 months and 22 days. He opposes the prayer on the ground that commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot. This is the 3rd bail application filed on his behalf, earlier two petitions having been withdrawn on 01.08.2023 and 20.09.2023, Annexure P-5 and P-6, when this Court was not inclined. There is every possibility of the petitioner fleeing from justice and committing a similar offence by indulging in drug trafficking. Thus, it is prayed that the present petition be dismissed.

5. Heard.

6. Notably, it is a case of chance recovery of commercial quantity of contraband from the petitioner, where the charges under Section 22 NDPS Act were framed for which the minimum sentence prescribed is 10 years, extendable upto 20 years. The question regarding 'conscious possession' has to be determined by the trial Court. In this regard a reference can be made to **Union of India vs. Mohd. Nawaz Khan**, (2021) 10 SCC 100, wherein Hon'ble the Supreme Court in somewhat similar circumstances, cancelled the bail granted to the accused by the High Court and observed thus:

“26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* [*Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431] , where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* [*Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881] , this Court also observed that the term

“possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

7. The petitioner is stated to have been in custody only for a period of 11 months and 22 days. Moreso, on two earlier occasions, when the bail application was on the verge of being dismissed, the same was opted to be withdrawn, on 20.09.2023. There is no new ground that has been projected, which may have persuaded this Court.

8. The recovered quantity of contraband in the present case falls in the category of 'commercial quantity' and would thus, attract the fetters imposed by Section 37 of the Act. In **State of Kerala vs. Rajesh**, (2020) 12 SCC 122, Hon'ble the Supreme Court has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under the Act is uncalled for.

9. The stringent provisions as contained in the statute, are to deal with the drug menace plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric. The petitioner was found to be in possession of commercial quantity of contraband, which is seriously condemnable by the government when looked from the perspective of the deteriorating conditions and thus, every effort is being made to control the grave situation. Further, there is still a possibility of the accused reoffending. Moreso, the rigors of Section 37 (1) (b) (ii) of the Act are fully attracted in the present case as there is nothing on

record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question.

10. In **Union of India vs. Ajay Kumar Singh**, 2023 SCC OnLine SC 346, Hon'ble the Supreme Court held that "This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, *inter alia*, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail."

11. This Court, considering the peculiar facts and circumstances of the case in light of the afore-referred judgments, is not inclined to grant concession of regular bail to the petitioner. As such, the present petition being devoid of merits is hereby dismissed.

12. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

22.11.2023
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No